

FILED

AUG 13 2013

CLERK, US DISTRICT COURT
NORFOLK, VA

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

)
JOHNNY E. MILLER,)
)
Petitioner,)
)
v.) Case No.: 2:12-cv-425
)
HAROLD W. CLARKE, Director,)
Virginia Department of)
Corrections,)
)
Respondent.)
)

FINAL ORDER

Before the Court is a Petition for a Writ of *Habeas Corpus* filed pursuant to 28 U.S.C. § 2254 and the Respondent's Motion to Dismiss. In his Petition, the *pro se* Petitioner alleges ineffective assistance of trial counsel, a due process violation arising from the prosecution's suppression or withholding of the victim's/witness's criminal history, and insufficiency of the evidence.

The matter was referred for disposition to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and (C), Federal Rule of Civil Procedure 72(b), Local Civil Rule 72, and the April 2, 2002, Standing Order on Assignment of Certain Matters to United States Magistrate Judges. In a Report and Recommendation filed on June 17, 2013, the Magistrate Judge

recommended the Motion to Dismiss be granted and the Petition be denied and dismissed with prejudice. The parties were advised of their right to file written objections to the Report and Recommendation. On July 3, 2013, the Court received the Petitioner's objections. The Respondent has not responded to these objections, however, and the time to do so has lapsed.

Having reviewed the record and the Petitioner's objections, and having made *de novo* findings with respect to the portions objected to, the Court agrees with the Report and Recommendation on the grounds stated by the Magistrate Judge and **ADOPTS** and **APPROVES** the Report and Recommendation, ECF No. 17, in its entirety as the Court's own opinion. Accordingly, the Court **GRANTS** the Respondent's Motion to Dismiss, ECF No. 6, and **DENIES** and **DISMISSES** the Petition **WITH PREJUDICE**.¹

The Petitioner is notified that he may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of the Court at the Walter E. Hoffman United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty days from the date judgment is entered. Because the Petitioner has failed to demonstrate a substantial showing of the denial of a

¹The Court leaves it to Petitioner to take any action with the Virginia State Bar that he deems appropriate with respect to the May 1, 2009 letter from his state court trial attorney.

constitutional right pursuant to 28 U.S.C. § 2253(c) and Federal Rule of Appellate Procedure 22(b)(1), the Court declines to issue a certificate of appealability. *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003).

The Clerk is **DIRECTED** to forward a copy of this Order to the Petitioner and counsel of record for the Respondent.

It is so **ORDERED**.

18/08/13
Mark S. Davis
United States District Judge

Mark S. Davis
United States District Judge

Norfolk, Virginia

Date: *August 13, 2013*